

**PROPOSED REVISIONS TO THE COASTAL ZONE LAND USE
ORDINANCE TO RUN CONCURRENTLY
WITH THE ESTERO AREA PLAN UPDATE
Planning Commission-Recommended Plan, July 2004**

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 23 OF THE SAN LUIS OBISPO COUNTY CODE, THE COASTAL ZONE LAND USE ORDINANCE; SECTIONS 23.04.186, 23.05.050, 23.06.100, 23.06.106, 23.06.108 REGARDING WATER QUALITY AND DRAINAGE; SECTION 23.05.110 REGARDING ROADS AND BRIDGES; SECTIONS 23.04.200 AND 23.07.104 REGARDING ARCHAEOLOGICAL RESOURCES; SECTION 23.04.210 REGARDING VISUAL RESOURCES; SECTION 23.04.220 REGARDING ENERGY CONSERVATION; SECTION 23.04.440 REGARDING A COMMUNITY-BASED TDC PROGRAM FOR LOS OSOS; AND SECTIONS 23.01.043 AND 23.11.030 REGARDING APPEALS WITHIN UNMAPPED ENVIRONMENTALLY SENSITIVE HABITATS

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1: Chapter 23.04 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new section 23.04.200** to read as follows:

23.04.200 - Protection of Archaeological Resources Not Within the Archaeologically Sensitive Areas Combining Designation: All development applications that propose development that is not located within the Archaeologically Sensitive Areas combining designation and that meets the following location criteria shall be subject to the standards for the Archaeologically Sensitive Areas combining designation in Chapter 23.07: development that is either within 100 feet of the bank of a coastal stream (as defined in the Coastal Zone Land Use Ordinance), or development that is within 300 feet of such stream where the slope of the site is less than 10 percent.

This amendment treats areas close to streams--that are known to have a higher likelihood of containing archaeological resources--as though they were in the Archaeologically Sensitive combining designation, without actually mapping them. Such areas would be subject to the AS combining designation standards in Chapter 23.07, as revised in the following section. In practice, new development in such areas is typically required to have an archaeological surface survey in connection with environmental review, where required by CEQA.

SECTION 2: Section 23.07.104c [Archaeologically Sensitive Areas: When a mitigation plan is required] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby **amended** to read as follows:

- b. **When a mitigation plan is required.** If the preliminary site survey determines that proposed development may have significant effects on existing, known or suspected archaeological resources, a plan for mitigation shall be prepared by the archaeologist. The purpose of the plan is to protect the resource. The plan may recommend the need for further study, subsurface testing, monitoring during construction activities, project redesign, or other actions to mitigate the impacts on the resource. **Highest priority shall be given to avoiding disturbance of sensitive resources. Lower priority mitigation measures may include use of fill to cap the sensitive resources. As a last resort, the review authority may permit excavation and recovery of those resources.** The mitigation plan shall be submitted to and approved by the Environmental Coordinator, and considered in the evaluation of the development request by the **review authority** ~~applicable approval body~~.

This amendment states the priorities for mitigation of impacts to archaeological resources, with highest priority given to avoidance. This amendment codifies what is already current practice that is consistent with the CEQA Guidelines.

SECTION 3: Chapter 23.04 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new section 23.04.210** to read as follows:

23.04.210 - Visual Resources:

The following standards apply within Critical Viewsheds, Scenic Corridors and Sensitive Resource Area (SRA) combining designations that are intended to protect visual resources, as identified in this title, the Official Maps, Part III of the Land Use Element, or the area plans of the Local Coastal Plan.

- a. **Applicability of standards.** The following standards apply to public and private development that consists of the following: proposed land divisions and residential and residential accessory structures (including water tanks), agricultural and agricultural accessory structures, commercial structures, pipelines and transmission lines, public utility facilities, communications facilities, and access roads that are required by the Coastal Zone Land Use Ordinance to have a land use permit, except that the following are exempt from some or all of these standards:
- (1) Agricultural accessory structures that are 600 square feet or less in area.
 - (2) **Project not visible.** An exemption from the standards in the following subsections c(1), (2), (4), and (5) may be granted if documentation is provided demonstrating that the proposed structures and access roads will not be visible from the ocean, the shoreline, public beaches, the Morro Bay estuary, and any of the roads specified in the applicable area plan planning

area standards for Critical Viewsheds, Scenic Corridors or SRA's that are intended to protect visual resources. Such documentation shall at a minimum provide topographic and building elevations with preliminary grading and building plans. An exemption from the standard in subsection c(6) may be granted if the preceding documentation is provided, and if open space preservation within the Critical Viewshed or SRA is not otherwise needed to protect sensitive habitat or watershed, as identified in the area plans.

- b. **Permit requirement.** Minor Use Permit approval, unless Development Plan approval is otherwise required by this title or planning area standards of the area plans. The land use permit or land division application shall include the following:

- (1) A landscaping plan and a visual analysis that is prepared by a licensed architect, a licensed landscape architect or other qualified person acceptable to the Director of Planning and Building. The landscaping plan and visual analysis shall be used to determine compliance with the following standards.

- c. **Standards for Critical Viewsheds and SRAs for protection of visual resources.** The following standards apply within areas identified as Critical Viewsheds or SRAs in the area plans for protection of visual resources.

- (1) **Location of development.** Locate development, including accessory structures, water tanks and access roads, in the least visible portion of the site as viewed from any of the applicable roads or highways described in the applicable planning area standards in the area plans, consistent with protection of other resources. Visible or partially visible development locations shall only be considered if no non-visible development locations are identified, or if such locations would be more environmentally damaging. Visible or partially visible development locations may be approved where visual effects are reduced to an insignificant level, as determined by the review authority. Use topographic features first and vegetation second to screen development from public view.
- (2) **Building visibility.** Minimize building height and mass by using low-profile design where applicable, including partially sinking structures below grade. Minimize the visibility of buildings, including water tanks, by using colors to harmonize with the surrounding environment.
- (3) **Ridgetop development.** Locate structures so that they are not silhouetted against the sky as viewed from the ocean, the shoreline, public beaches, the Morro Bay estuary, and applicable roads or highways described in the applicable planning area standards in the area plans, unless compliance with this standard is infeasible or results in more environmental damage than an alternative.

- (4) **Landscaping for hillside and ridgetop development.** Provide at least 80 percent screening of structures at plant maturity using native or drought-tolerant vegetation (no invasive species) as seen from applicable roads or highways described in the applicable planning area standards in the area plans, but without obstructing major public views (e.g., screening should occur at the building site rather than along a public road). Maximize use of evergreen trees and large-growing shrubs that have shapes similar to existing native vegetation. Alternatives to such screening may be approved if visual effects are otherwise reduced to an insignificant level through use of topographic features or design of structures. Provisions shall be made to maintain and guarantee the survival of required landscape screening for a period of at least five years.
- (5) **Residential land divisions - cluster requirement.** Residential land divisions and their building sites shall be clustered in accordance with Chapter 23.04 or otherwise concentrated in order to protect the visual resources as identified in the area plans.
- (6) **Open space preservation.** Pursuant to the purpose of the Critical Viewshed or SRA to protect significant visual resources, open space preservation is a compatible measure to support the approval of new development. Approval of an application for any land division, Minor Use Permit or Development Plan (excluding any agricultural accessory building) is contingent upon the applicant executing an agreement with the county to maintain in open space use appropriate portions of the site within the Critical Viewshed or SRA (for visual protection) that are not intended for development. Guarantee of open space preservation may be in the form of public purchase, agreements, easements controls or other appropriate instrument, provided that such guarantee agreements are not to grant public access unless acceptable to the property owner.
- d. **Standards for scenic corridors.** The following standards apply within areas identified as Scenic Corridors in the area plans for protection of visual resources.
- (1) **Setback.** Where possible, residential buildings, residential accessory structures and agricultural accessory structures shall be set back 100 feet from the edge of the right-of-way of the road along which the Scenic Corridor is established in the area plans, or a distance as otherwise specified in the area plan planning area standards. If there is no feasible development area outside of this setback, the project shall be located on the rear half of the property and shall provide a landscaping screen of moderately fast-growing, drought-tolerant plant material to provide 80 percent view coverage at plant maturity at the building site (not along the public road). A landscaping plan in accordance with the requirements of Chapter 23.04 shall be provided at the time of building permit application submittal.

- (2) **Signs.** Locate signs that are required to have a land use permit, especially freestanding signs, so that they do not interfere with vistas from the road along which the Scenic Corridor is established in the area plans.

This amendment establishes a consistent set of standards for projects located within visually sensitive areas, using language taken from existing standards in the area plans. This approach will eliminate the need to establish new, separate visual standards in each area plan and should help eliminate the variations in such standards from one area plan to another.

SECTION 4: Chapter 23.04 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new section 23.04.220** to read as follows:

23.04.220 - Energy Conservation, Including Design for Solar Orientation: The policies and guidelines for designing compact communities and energy efficient projects described in the Energy Element of the County General Plan shall be consulted for new land divisions and development.

This amendment encourages project proponents to consider incorporating into project design the energy conservation measures in the Energy Element; however, the amendment in itself does not require any specific measures.

SECTION 5.: Section 23.04.440 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **revising and recodifying as subsection a**, and by **adding new subsection b**, to read as follows:

23.04.440 Community-Based Transfer of Development Credits Programs - Cambria.

a. Cambria.

The purpose of this subsection is to implement portions of the Cambria/Lodge Hill **Community-based** Transfer of Development Credits Program (TDC) by providing a procedure to allow simple transfers within the Lodge Hill area of the community of Cambria. Consistent with applicable planning area programs and standards of the Land Use Element, the objective of this subsection is to reduce potential buildout in sensitive areas of Lodge Hill called "Special Project Areas." Through transfer of development credits, allowable building area (expressed in square footage) for lots within a special project area may be transferred to more suitable sites within Lodge Hill. A lot from which development credits have been transferred is "retired," and loses its building potential through recordation of a permanent conservation easement or other document. A residence on a "receiver" lot may thus be developed with larger dwellings than would otherwise be allowed by planning area standards.

- (1) ~~a.~~ **Where allowed.** Development credit transfers shall occur only on parcels located within the Lodge Hill area (east and west) as defined by Figure 3, Cambria Urban Area, Part II of the Land Use Element. Lots being retired for purposes of a transfer shall be located within a special project area as shown on Figure 3. In no case shall a development credit be transferred to a building site within a special project area from outside the area. Lots within a special project area may qualify for additional dwelling square footage only by retiring lots(s) within a special project area.
- (2) ~~b.~~ **Permit Requirement.** Minor Use Permit for the proposed dwelling and site receiving the additional allowed square footage. No permit requirement for the lot to be retired into open space.
- (3) ~~c.~~ **Required findings.** The ~~review authority~~ Planning Director or applicable appeal body shall not approve a Minor Use Permit for a residence to be constructed with additional square footage gained through TDC until the following findings have been made:
- i. ~~(1)~~ Adequate instruments have been executed to assure that lot(s) to be retired will remain in permanent open space and that no development will occur; and
 - ii. ~~(2)~~ The “receiver” site can accommodate the proposed scale and intensity of development without the need for a variance (23.01.045), exception to height limitations (23.04.124b) or modification to parking standards (23.04.162h); and
 - iii. ~~(3)~~ The circumstances of the transfer are consistent with the purpose and intent of the applicable planning area programs and standards regarding transfer of development credits.
- (4) ~~d.~~ **Eligible purchasers of TDC's.** Owners of small lots within Lodge Hill may be allowed to construct a larger residence than would otherwise be allowed by the planning area standards of the Land Use Element through participation in the TDC program. Larger residences may be constructed on a “receiver” lot through purchase of available square footage from a non-profit corporation organized for conservation purposes.
- (5) ~~e.~~ **Application contents.** In addition to meeting the application contents of section 22.02.033 (Minor Use Permit), an applicant proposing a TDC shall submit evidence that a preliminary agreement has been reached between the property owners and a non-profit corporation organized for conservation purposes approved by the Planning Director, including the following:
- i. ~~(1)~~ The location of the lot(s) to be retired;

- ii. ~~(2)~~ The size and approximate slope of both lots to be retired and lot(s) to receive additional square footage;
 - iii. ~~(3)~~ The method of permanent disposition of fee title of the lot(s) to be retired;
 - iv. ~~(4)~~ The type of conservation easement, deed restriction or other instrument utilized to guarantee the permanent open space of the lots(s) to be retired.
- (6) f. **Participation of a non-profit corporation required.** A TDC shall not be approved unless a non-profit corporation or public agency, organized for conservation purposes and approved by the Planning Director, participates in the TDC process. The role of the non-profit corporation may include public information and TDC program development, a source of available square footage for purchase, recordation of easements, deed restrictions or other documents, and may be responsible for final disposition of lots to be retired.

b. Los Osos.

The purpose of this subsection is to implement portions of the Los Osos Community-based Transfer of Development Credits (TDC) Program by providing a procedure to allow simple transfers between sending sites (TDCS) and receiving sites (TDCR) that meet the criteria established in the Estero Area Plan of the Land Use Element and Local Coastal Plan. Consistent with applicable planning area programs and standards in the Estero Area Plan, the objectives of this subsection are to help establish a greenbelt around Los Osos, clearly define the urban edge of the community, prevent urban sprawl, discourage conversion of agricultural lands, protect unique and sensitive habitat, and protect scenic qualities. Through transfer of development credits, all or a portion of the allowable density on an identified sending site may be transferred to receiving sites that are suitable for higher intensity development. A sending site or portion thereof from which development credits have been transferred is "retired," and loses its building potential through recordation of a permanent conservation easement or other document. A receiving site to which development credits have been transferred may thus be developed at a higher density or intensity than would otherwise be allowable by the Local Coastal Program.

- (1) **Where allowed.** Development credits may be transferred only to properties that are determined by the Planning Director to meet the criteria for transfer of development credits receiving sites (TDCR) described in the text of the Estero Area Plan of the Land Use Element and Local Coastal Plan. Those properties may qualify for additional density or intensity of development only when retiring properties that are determined by the Planning Director to meet the criteria for transfer of development credits sending sites (TDCS) described in the text of the Estero Area Plan.

- (2) **Required findings.** The review authority shall not approve a land use permit or tentative map that proposes additional density or intensity of development through use of TDCs until the following findings are made:
- i. Adequate instruments have been executed to assure that all property to be retired will permanently remain in open space or in agricultural uses consistent with the Coastal Zone Framework for Planning, Land Use Element and Local Coastal Plan, and that no other development will occur.
 - ii. The circumstances of the transfer are consistent with the purpose and intent of the applicable planning area programs and standards regarding transfer of development credits.
- (3) **Eligible purchasers of TDC's.** Owners of properties that meet the criteria for TDCRs may be allowed to develop at higher densities or intensities than would otherwise be allowable by the Local Coastal Program through participation in the Los Osos Community-based TDC program. Higher density or intensity development may be developed on a TDCR site by purchasing development credits from a site(s) that meets the criteria for TDCS sites through a non-profit corporation or public agency organized for conservation purposes and approved by the **Board of Supervisors Planning Director**.
- (4) **Application contents.** In addition to meeting the application contents of Chapter 23.02 of the Coastal Zone Land Use Ordinance, an applicant proposing TDCs shall submit evidence that a preliminary agreement has been reached between the property owners and a non-profit corporation organized for conservation purposes and approved by the **Board of Supervisors Planning Director**, including the following:
- i. The location of the property, or portion thereof, to be retired.
 - ii. The number of development credits that are to be retired, and the number of credits, if any, that will remain on the TDCS site.
 - iii. The method of permanent disposition of fee title of the property to be retired.
 - iv. The type of conservation easement, deed restriction or other instrument used to guarantee the permanent open space or agricultural use of the property to be retired.
- (5) **Participation of a non-profit corporation required.** A TDC shall not be approved unless a non-profit corporation or public agency, organized for conservation purposes and approved by the **Board of Supervisors**

Planning Director, participates in the TDC process. The non-profit corporation may provide public information; help develop the TDC program; purchase and sell development credits; record easements, deed restrictions or other documents; and manage and otherwise be responsible for the final disposition of properties to be retired.

This amendment is needed to enable implementation of the community-based TDC program established as part of the Estero Area Plan update (in Chapters 6 and 7 of the draft Estero Area Plan).

SECTION 6.: Chapter 23.05 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new section 23.05.110** to read as follows:

23.05.110 - Road and Bridge Design, Construction and Maintenance:

Roads and bridges shall be designed, constructed and maintained to protect sensitive resources (such as aquatic habitat and scenic vistas) and prime agricultural soils to the maximum extent feasible; to minimize terrain disturbance, vegetation removal and disturbance of natural drainage courses; to avoid the need for shoreline protective devices; and to provide for bikeways and trails, consistent with the Circulation Element of the County General Plan. In addition, the following measures shall be implemented:

- a. Contour slopes to blend in with adjacent natural topography
- b. Replant graded areas with native vegetation
- c. Include pollution prevention procedures in the operation and maintenance of roads and bridges to reduce pollution of surface waters
- d. Apply fertilizers and nutrients at rates that establish and maintain vegetation without causing nutrient runoff to surface waters
- e. Give preference to aerial crossings of watercourses

This amendment expands upon a planning area standard in the existing Estero Area Plan by applying the standards to bridges as well as to roads, and by protecting sensitive habitat and prime agricultural soils, as well as visual resources. Additional measures are also included, such as methods to prevent water pollution. This amendment is consistent with another proposed amendment in connection with Periodic Review implementation that would allow for better protection of Environmentally Sensitive Habitat Areas by examining alternatives to locations of permitted roads, bridges and other crossings.

SECTION 7.: Section 23.04.186d(3) [Landscape plan content: Planting plan] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby **amended by adding new subsection (ix)** to read as follows:

- (ix) A note that fertilizers and nutrients are to be applied at rates that establish and maintain vegetation without causing nutrient runoff to surface waters.

SECTION 8.: Section 23.05.050b [Drainage Standards: Natural channels and runoff] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby **amended** to read as follows:

- b. **Natural channels and runoff.** Proposed projects are to include design provisions to retain off-site natural drainage patterns and, when required, limit peak runoff to pre-development levels. **To the maximum extent feasible, all drainage courses shall be retained in or enhanced to appear in a natural condition, without channelization for flood control.**

SECTION 9.: Section 23.05.050 [Drainage Standards] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby **amended by revising subsection a** [design and construction], **and by adding new subsections g, h and i** to read as follows (new subsections e and f regarding best management practices are proposed to be added through Periodic Review implementation):

- a. **Design and construction.** Drainage systems and facilities subject to drainage plan review and approval that are to be located in existing or future public rights-of-way are to be designed and constructed as set forth in the County Engineering Department Standard Improvement Specifications and Drawings. Other systems and facilities subject to drainage plan review and approval are to be designed in accordance with good engineering practices. **The design of drainage facilities in new land divisions and other new development subject to Minor Use Permit or Development Plan approval shall maximize groundwater recharge through on-site or communitywide stormwater infiltration measures. Examples of such measures include constructed wetlands, vegetated swales or filter strips, small percolation ponds, subsurface infiltration basins, infiltration wells, and recharge basins. Where possible, recharge basins shall be designed to be available for recreational use.**
- g. **Sensitive habitat and groundwater protection.** Runoff from roads and development shall not adversely affect sensitive habitat, groundwater resources and downstream areas, and shall be treated to remove floatable trash, heavy metals and chemical pollutants as necessary prior to discharge into surface or groundwater.
- h. **Impervious surfaces.** New development shall be designed to minimize the amount of impervious surfaces.

SECTION 10.: Section 23.06.100 [Water Quality] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new section 23.06.104** to read as follows:

23.06.104 - Municipal Well-head Protection: Referrals:

The purpose of this section is to protect groundwater resources from contamination by proposed development.

Minor Use Permit and Development Plan applications that propose uses within one mile of a municipal well (locations of municipal wells may be shown in the area plans) that have the potential to release toxic or hazardous materials (e.g. gas stations, businesses that handle hazardous wastes) shall be referred to the County Environmental Health Division for review and appropriate recommended measures that assure protection of water quality. Recommended measures may include, but are not limited to the following:

- a. Determining the extent of areas that contribute water to municipal wells, and making further recommendations as appropriate
- b. Relocating proposed uses relative to municipal wells, especially where such uses involve the manufacture, storage or handling of hazardous materials
- c. Concentrating or clustering development relative to the location of municipal wells
- d. Reducing the density or intensity of proposed uses
- e. Limiting the amounts of potential contaminants that may be stored or handled

SECTION 11.: Section 23.06.100 [Water Quality] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new section 23.06.106** to read as follows:

23.06.106 - Wastewater: On-site Sewage Disposal:

Wastewater from on-site sewage disposal systems shall not adversely affect groundwater resources or sensitive habitat.

SECTION 12.: Section 23.06.100 [Water Quality] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by **adding new section 23.06.108** to read as follows:

23.06.108 - Chemical Control:

Land use permit applications that require discretionary review for projects that have potential to release toxic or hazardous materials (e.g. gas stations, businesses that handle hazardous wastes) shall include measures, and where applicable, Best Management Practices that: a) minimize the amounts of potential contaminants that may be stored or handled; b) assure proper containment and c) prevent release of contaminants into the environment. These measures and practices shall be referred to the County Division of Environmental Health for review and for recommendations that shall be implemented through the land use permit.

In general, preceding Sections 7 through 12 modify existing standards and establish new standards in order to better manage drainage and protect water quality, groundwater recharge and sensitive habitat. These amendments respond to concerns expressed by the Coastal Commission staff about the need to address non-point source pollution from development activities. These standards are in addition to the standards requiring best management practices for residential and non-residential projects that are proposed to be implemented through the Periodic Review process.

SECTION 13.: Section 23.01.043c [Appeals to the Coastal Commission, Appealable Development] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby **amended** to read as follows:

- c. **Appealable development.** As set forth in Public Resources Code Section 30603(a) ~~and this title, an action a decision~~ by the County on a permit application, ~~including any Variance, Exception, or Adjustment granted,~~ for any of the following projects may be appealed to the California Coastal Commission:
- (1) Developments approved between the ~~sea ocean~~ and the first public road paralleling ~~to the sea ocean~~, or within 300 feet of the inland extent of any beach (or of the mean high tide line ~~of the ocean~~ where there is no beach), whichever is the greater distance, as shown on the adopted post-certification appeals maps.
 - (2) Approved developments not included in subsection c(1) of this section that are proposed to be located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff, as shown on the adopted post-certification appeals maps.
 - (3) Developments approved in areas not identified ~~included~~ in subsections c(1) or c(2) ~~above~~ that are located in a Sensitive Coastal Resource Area, ~~as defined in Chapter 23.11 of this title,~~ which includes:

- (i) Special marine and land habitat areas, wetlands, lagoons, and estuaries mapped and designated as Environmentally Sensitive Habitats (ESHA) in the Local Coastal Plan. Does not include resource areas determined by the County to be Unmapped ESHA.
 - (ii) Areas possessing significant recreational value, including any "V" (Visitor Serving designation) as shown in the Land Use Element and areas in or within 100 feet of any park or recreation area.
 - (iii) Highly scenic areas which are identified as Sensitive Resource Areas by the Land Use Element.
 - (iv) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.
 - (v) Special Communities or Small-Scale Neighborhoods which are significant visitor destination areas as defined by Chapter 23.11 of this title.
 - (vi) Areas that provide existing coastal housing or recreational opportunities for low-and moderate income persons.
 - (vii) Areas where divisions of land could substantially impair or restrict coastal access.
- (4) Any approved development not listed in Coastal Table O, Part I of the Land Use Element as a Principal Permitted (PP) Use.
- (5) Any development that constitutes a Major Public Works Project or Major Energy Facility. "Major Public Works Project" or "Major Energy Facility" shall mean any proposed public works project or energy facility exceeding \$100,000 in estimated construction cost, pursuant to Section 13012, Title 14 of the California Administrative Code.

The procedures established by Section 23.01.041c. (Rules of Interpretation) shall be used to resolve any questions regarding the location of development within a Sensitive Coastal Resource Area.

SECTION 14.: Section 23.11.030 [Coastal Zone Land Use Ordinance Definitions] of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby **amended** to read as follows:

Environmentally Sensitive Habitat Area (Mapped ESHA). A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development. They include wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations. **Is the same as an Environmentally Sensitive Habitat.**

Environmentally Sensitive Habitat Area (Unmapped ESHA). A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could easily be disturbed or degraded by human activities and development. They include, but are not limited to, known wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats that may not be mapped as Land Use Element combining designations. The existence of Unmapped ESHA is determined by the County at or before the time of application acceptance and shall be based on the best available information. Unmapped ESHA includes but is not limited to:

1. Areas containing features or natural resources when identified by the County or County-approved expert as having equivalent characteristics and natural function as mapped other environmentally sensitive habitat areas;
 - a. Areas known to contain sensitive resources identified by appropriate resource protection agencies, such as the U.S. Fish and Wildlife Service and the State Department of Fish & Game;**
 - b. Areas previously known to the County from environmental experts, documents or recognized studies as containing ESHA resources;
 - c. Other areas commonly known as habitat for species determined to be threatened, endangered, or otherwise needing protection.

The purpose of preceding Sections 13 and 14 is twofold. Section 14 adds a second type of ESHA that is usually unmapped or poorly defined on County LCP maps. Early recognition of the existence of ESHA, whether it is mapped or unmapped, is important for both proposed development and protection of the resources. This proposed change will allow for better identification and protection of Environmentally Sensitive Habitat Areas and bring the County's LCP into conformance with the Coastal Act.

Section 13 amends the Appeals section to make it clear that development proposed in an Unmapped ESHA is not appealable only because it is ESHA. However, it may be appealable for other reasons consistent with other LCP requirements.

SECTION 15.: That the Board of Supervisors has considered the initial study prepared and conducted with respect to the matter described above. The Board of Supervisors has, as a result of its consideration, and the evidence presented at the hearings on said matter, determined that the proposed negative declaration as heretofore prepared and filed as a result of the said initial study, is appropriate, and has been prepared and is hereby approved in accordance with the California Environmental Quality Act and the County's regulations implementing said Act. The Board of Supervisors, in adopting this ordinance, has taken into account and reviewed and considered the information contained in the negative declaration approved for this project and all comments that were received during the public hearing process. On the basis of the Initial Study and any comments received, there is no substantial evidence that the adoption of this ordinance will have a significant effect on the environment.

SECTION 16.: If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 17.: This ordinance shall become operative only upon approval without any modifications by the California Coastal Commission and upon acknowledgment by the San Luis Obispo County Board of Supervisors of receipt of the Commission's resolution of certification.

SECTION 18.: This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

INTRODUCED at a regular meeting of the Board of Supervisors held on the ____ day of _____, 2004, and PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the ____ day of _____, 2004, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

Chairman of the Board of Supervisors,
County of San Luis Obispo,
State of California

ATTEST:

County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California

[SEAL]

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION:

JAMES B. LINDHOLM, JR.
County Counsel

By:_____
Deputy County Counsel

Dated:_____